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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT SEATTLE**

10 WILLIAM HEATHCOTE individually and on
11 behalf of all others similarly situated,

12 Plaintiff,

13 v.
14 SPINX GAMES LIMITED, GRANDE GAMES
15 LIMITED, and BEIJING BOLE TECHNOLOGY
16 CO., LTD.,

17 Defendants.

Case No. 2:20-cv-01310-RSM

18 **DECLARATION OF PHILIP L. FRAIETTA**
19 **IN SUPPORT OF PLAINTIFF'S MOTION**
20 **FOR TEMPORARY RESTRAINING**
21 **ORDER**

22 **DECLARATION OF PHILIP L. FRAIETTA**

23 I, Philip L. Fraietta, declare as follows:

24 1. I am an attorney at law licensed to practice in the State of New York, and I have
25 been admitted to practice *pro hac vice* in this action. I am a Partner with Bursor & Fisher, P.A.,
26 counsel for Plaintiff in this action. I make this declaration in support of Plaintiff's Motion for
27 Temporary Restraining Order. I have personal knowledge of the facts set forth in this declaration,
28 and, if called as a witness, could and would competently testify thereto under oath.

29 2. Plaintiff filed this action against Grande Games, Ltd. ("Grande") only on September
30 1, 2020 (Dkt. 1). Plaintiff alleged that Defendant offers a multitude of electronic versions of slot
31 machine games, and further alleged that these games constitute illegal gambling under Washington
32 law. *Id.*

1 3. Since that time, because Grande is a Chinese company, Plaintiff has been attempting
2 to effectuate service on Defendant Grande Games, Ltd. through the Hague Convention, but to date,
3 has been unable to do so.

4 4. At the time the Complaint was filed, Grande's terms of service did not include an
5 arbitration provision or a class action waiver.

6 5. Then, last week, Plaintiff's counsel began to receive phone calls from putative class
7 members inquiring into the "pop-up" window that now appears on Defendant's electronic slot
8 machine games. The "pop-up" window requires putative class members to consent to arbitration, a
9 class action waiver, and a California choice-of-law provision in order to keep playing the electronic
10 slot machine games. The "pop-up" window also purports to opt putative class members out of the
11 putative class in this case, and provides contact information for my firm. True and correct copies
12 of the pop-up window are attached here as **Exhibit A**.

13 6. On April 9, 2021, Plaintiff filed a First Amended Complaint adding Spinx Games
14 Limited and Beijing Bole Technology Company, Ltd. as Defendants in this action (Dkt. 14).

15 7. As seen in Exhibit A, the pop-up window provides a new San Francisco based
16 address for Defendants. Thus, Plaintiff is attempting service at that San Francisco based address,
17 and will serve copies of these motion papers to that address.

18 8. Attached hereto as **Exhibit B** is a true and correct copy Defendants' new Terms of
19 Service, dated February 8, 2021.

20 9. Attached hereto as **Exhibit C** is a true and correct copy of an August 1, 2018 Letter
21 of Natasha Dow Schüll, Ph.D. to Washington State Gambling Commission regarding the analogous
22 "Big Fish Casino" games. It is also available at
23 <https://www.wsgc.wa.gov/sites/default/files/public/news/big-fish/Dr.%20Schull%20Comments.pdf>

24 10. Attached hereto as **Exhibit D** is a true and correct copy of *Kater v. Churchill Downs*
25 *Inc.*, 423 F. Supp. 3d 1055 (W.D. Wash. 2019).

11. A copy of Plaintiff's Motion for Temporary Restraining Order and Proposed Order were hand delivered to the address listed in Defendants' Terms of Service, as seen in Exhibit A. A certificate of service is attached hereto as **Exhibit E**.

I declare under penalty of perjury under the laws of the United States, the State of New York and the State of Washington that the foregoing is true and correct. Executed on April 15, 2021 at New York, New York.

/s Philip L. Fraietta

Philip L. Fraietta